IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1137 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RAVJI NARAN PATEL

Appearance:

MR KC SHAH APP for Petitioner

MR YS MANKAD for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 30/03/2000

ORAL JUDGEMENT

The State of Gujarat has preferred this acquittal appeal against the impugned judgment and order of acquittal dated 3rd June, 1991, rendered by the learned Judicial Magistrate, First Class, Kutch at Bhuj, in

Criminal Case No. 621/86.

It so happened that the complainant Shri R.P.Christian, Food Inspector, Bhuj Nagar Palika, had occasion of taking sample of Rayada Oil from the shop of the accused at around 10-15 AM on 31st January, 1986, and upon its analysis by the Public Analyst, it was found to be not conforming to the standards laid down under the Prevention of Food Adulteration Act, 1954 (PFA Act for short). Upon the complaint filed by him and at the conclusion of the trial, the learned Magistrate rendered acquittal on number of grounds including the ground that the prosecution failed to establish the case against the accused.

I have heard the learned APP. He has taken me through the evidence including the report of the Public Analyst. Having heard him as well as the learned advocate for the accused, I am of the opinion that upon appreciation of the evidence adduced before the learned Magistrate, the findingsrendered by him, can not be disturbed.

The learned Magistrate has rendered acquittal on the ground that the prosecution has failed to establish the fact with regard to the procedure of taking sample beyond reasonable doubt. The learned Magistrate has found that the prosecution has failed to establish the vital fact with regard to cleaning of the utensils and the instrument of measure used for the purpose of taking the sample. He has made a reference to the Panchnama Ex.96 and the evidence of the complainant for coming to the conclusion. He has also come to the conclusion that the report of the Public Analyst Ex. 23 and the details of the sample Ex. 24 did not establish beyond reasonable doubt that the case was clearly established, and that is how he has given benefit of doubt to the accused.

I have gone through the evidence placed on the record of the trial court. It would appear from the report of the Public Analyst that all other standards tally with PFA standards, but only Bellier test is 38.5 C. as against maximum of 27.5 C. This assumes importance in the context of the facts of the case with regard to the failure on the part of the prosecution to establish the manner of taking of sample as per the required procedure. Hence, bearing in mind the facts of the case, this appeal is not required to be entertained. Same is accordingly dismissed.

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JOSHI